HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION NO. 11999 OF 2007

DATE: 23.10.2007

Between:

M. Lava Kumar, S/o Vithalaiah aged about 44 years and two others.

...Petitioners

AND

1. The Divisional Railway Manager (Works) South Central Railway, Secunderabad and four others.

.....Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION NO. 11999 OF 2007

ORAL ORDER:

Heard the counsel.

This court ordered notice before admission on 11.6.2007 and further directed to maintain status quo for a limited period since Sri P. Gangarami Reddy, learned counsel representing the respondents 1 to 3 requested time to get instructions. This court issued Rule Nisi on 27.09.2007. WVMP No. 1590 of 2007 was filed to vacate the interim order.

The Writ Petition is filed for a Writ of Mandamus, declaring the action of the respondents 1 to 4 in forcibly dispossessing the petitioners herein from the patta lands in S.No. 16 without verifying the extents and boundaries and by ignoring the fact that the land belongs to them as is evident from the patta certificates issued by the Revenue authorities, pahanis and the register of R.O.R issued in the name of the petitioners as arbitrary, illegal, unjust apart from being without authority or jurisdiction to do so and consequently direct the respondents 1 to 4 not to encroach upon the patta lands of the petitioners herein in an extent of Ac. 0.15 guntas situated in S.No. 16 and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

It is stated that the second petitioner is the wife of the first petitioner and the third petitioner is the near relative. Originally the land in S.No. 16 belongs to Hazrat Mohd. Jhani, who was the pattedar of the said land. After his death the land is succeeded to his predecessors and accordingly they were under peaceful possession and enjoyment of the said land and there was no encumbrance at any point of time over the said land. Further it is

stated that the original pattedars have sold away the land property in an extent of Ac. 0.15 guntas to the petitioners. Initially, they entered into the agreement of sale on 1.6.1988 and subsequently they paid the entire sale consideration and from the date of agreement of sale they have been in peaceful possession and enjoyment of the above property. It is also stated that though they paid the total consideration, due to certain personal inconveniences and the circumstances they could not get a regular sale deed to be registered. Certain further facts also narrated in this regard. It is also stated that the property purchased by them was a vacant land in S.No. 16 of Girmajipet Village, Warangal Mandal and District and since the adjoining lands also are vacant at that point of time they have not bound their extent of land till recently. Due to the development of the lands in and around they have chosen to demarcate their lands and to make it feasible for the purpose of raising construction and they have approached the revenue authorities and applied for the demarcation of the land in S.No. 16 to their respective extents. The Assistant Director, District Survey and Land Records has conducted a survey and located their sites with boundaries and permitted them to raise fencing walls over the landed property. A Panchanama covering the above survey was also got issued to them and a copy of the same is filed in the material papers for the ready reference of this Court. It is also submitted that they have also requested the 5th respondent-Mandal Revenue Officer, to enter their names in the records of R.O.R and accordingly, entered their names in the records of R.O.R and accordingly, the same was effected and their names were shown in the above records of ROR. A copy of the records of ROR pertaining to 2006-07 and a copy of the proceedings of the 5th respondent in R.Dis.No. D1/2293/2006 dated 16.1.2007 to speak to the truth of their ownership of the lands in S.No. 16 is filed in the material papers for the ready reference of this Court.

It is further stated that while matters stood thus, the respondents 1 to 4 herein working for South Central Railway and the adjoining land to their site i.e. S.Nos. 6,7 and 8 belongs to the South Central Railway. They also seem to have similarly requested the Revenue Department for demarcation and their land also was demarcated by the authorities with metes and bounds

covered by a Panchanama. A copy of the Panchanama held in the land belonging to Railways is filed in the material papers for the ready reference of this Hon'ble Court.

It is also stated that while they are at the verge of making preparations for raising construction of residential building in their sites, certain unfamiliar situations have landed in despair and humiliation, which is detailed and elaborated for the kind consideration of this Court.

Further it is stated that the authorities, referred as respondents 1 to 4, in the guise of execution of certain works for the construction of a guesthouse without following the demarcations and without recognizing their extent of land have arbitrarily entered into their land and without there being any title for the railway over the land in S.No. 16 are acting very half hazardly and arbitrarily and started digging their land to raise structures, which action of them is highly arbitrary, illegal, unjust and without any authority to do the same. Even though the petitioners have produced their records and their perfection of title to the respondents 1 to 4 herein, they were reluctant and expressed their reluctance to the law and caused embarrassment and humiliation to all of them by forcibly removing them from the site and started execution of the work by digging the land. On 9.6.2007 they started digging our lands without verifying their title or records and are acting without knowledge of the facts and so arbitrarily that no other resort is left open to us except to witness the arbitrariness. Hence, aggrieved by the action of the authorities in expressing their arbitrary, illegal, unlawful and condemned action, they have no other option except to seek their redress through Article 226 of the Constitution of India to set right the naught of the respondents 1 to 4 in causing hindrance and affecting our valuable fundamental rights under Articles 14, 19 and 21 of the Constitution of India. In the circumstances, it is stated that the petitioners are left with no other option except to approach this Court.

In the counter affidavit filed by the respondents 1 to 4 , it is stated that the petitioners are not the absolute owners and possessors of the land in S.No. 16 to an extent of 15 Guntas situated at Girmajipet village, Warangal Mandal, District Warangal. The petitioners created a false agreement of

sale on a forged document in the year 1988 and the said false agreement of sale was got impounded by the RDO/Warangal on 13.11.2006. With the said impounded forged agreement, they got mutated their names in the pahanis on 16.1.2007 without notice to the Railways or Genral Public. On the basis of forged documents the petitioners wanted to grab the Railway land in S.No. 8. When the entire area became abadi, now the question of issuing pahanis does not arise at all. Hence, the petitioners do not get any title over the property in question.

It is further stated that the Railway Department is no way concerned with S.No. 16 and trying to grab the land in S.No. 8 , which is an adjacent survey number. More over the Railway Department constructed boundary wall for the entire area long back. Now the petitioners claiming the property inside the Railway boundary. In fact the said land in survey No. 8 is being enjoyed by the Warangal Railway station since more than 100 years i.e., from the time of Nizams. The petitioners in collusion with the pattedars created an agreement of sale with antedate and with a pre plan to grab Railway open land in S.No. 8 situated on the main road of Warangal Railway Station, which is costly. Except this piece of land, there is no vacant land on either side of the main road.

It is also further stated that it is incorrect to say that due to personnel inconvenience the petitioners could not get regular sale deed to be registered. The petitioners with a preplan to grab the Railway land, created antedate sale agreement on stamped paper. Mere impounding the said document, the petitioners do not get any title over the property. The Railways are in possession of the said piece of land since the time of Nizam with boundary wall constructed long back. The petitioners are not bonafide purchasers therefore the question of enjoying the property by the petitioners does not arise at all.

Further it is stated that the land in S.No. 16 and other land in other survey numbers are not vacant lands. The entire locality is a full commercial locality land except the land in question in S.No. 8, no other land is available in the said area. It is false to say that Assistant Director (District Survey and Land Records) conducted the panchanama. The actual Panchanama was

conducted by the Deputy Inspector of Survey and Land Records on 23.4.2003 wherein it is stated that the boundary constructed by the Railways holds good and the Railway land covered by the said Panchanama is in survey Nos. 6,7,and 8. The Panchanama conducted by the petitioners is without the presence of Railway officials, which is totally wrong. The petitioners with forged documents got their names mutated in the revenue records without notice to the Railways.

It is further stated that it is a fact that the land in S.Nos. 6,7 and 8 belongs to Railway department and survey was conducted on 23.4.2003 to verify the boundaries of Railway land to prevent encroachment. It is false and incorrect to say that the petitioners are making preparations for raising/Construction of residential building. It is incorrect to say that the Railway Department (Central Government) is encroaching the land of petitioners. The present position is that the Railways started construction on this piece of land, basement is completed and pillars are raised for the purpose of RPF Barracks. The budget has to be spent on or before August 2007. Other wise the budget will be lapsed and a lot inconvenience will be caused to RPF staff. The construction is well within S.No. 8, which is a Government land being enjoyed by the Railways since the time of Nizams.

Further it is stated that the petitioners are not entitled for grant of temporary injunction restraining the respondents 1 to 4. The petitioners failed to establish prima facie case and balance of convenience and irreparable loss caused to them. It is the Railway Department which was put to much irreparable loss which cannot be compensated in terms of money because the budget was sanctioned for RPF Barrcks and construction is in full swing with target for completion before 30th August 2007. Now in view of status quo orders the Railways are not proceeding with construction.

As can be seen from the respective stands taken by the parties, the respondents are not claiming any interest in S.No. 16. But however, the petitioners are contending that since these lands are adjacent lands, the respondents are proceeding with the construction of certain portions belonging to the petitioners virtually encroaching these lands. It is no doubt true that panchanama had been relied upon and it was pointed out that

demarcation had already been completed and hence, there cannot be any controversy relating to the identity of the property. Be that as it may since the respondents are not claiming any interest in the land in S.No. 16 and the grievance of the petitioners is that properly verifying the boundaries relating to the respondents' survey numbers, the respondents are trying to encroach upon S.No. 16, this court is of the considered opinion that let the Assistant Director (District Survey and Land Records), Warangal, clarify respective extents of the survey numbers and make clear demarcations of the same within a period of four weeks from the date of receipt of a copy of this order. Till then, status quo with regard to S.No. 16 granted by this Court shall be maintained.

The Writ Petition is disposed of accordingly. No order as to Costs.

_____

P.S. NARAYANA, J

Date: 23.10.2007
KA